John Fraser and Monica Fraser

v.

Town of North Hampton

Docket No.: 9765-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $223,500 (land $85,150; building $138,350) on a two-acre lot with a house (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden and prove disporportionality.

The Taxpayers argued the assessment was excessive because:

1) the land is very rutted with holes and dents and is not level, and one acre is unusable;

2) the land was purchased for $124,000 in 1986, and when the current land value is multiplied by the Town's 47% equalization ratio, the 100% value is $181,171, which is excessive;

3) a realtor's February 26, 1992 opinion of value estimated a $90,000 to $110,000 market value, which equates to a $47,000 equalized value;

4) the land value is almost half the total valuation and has increased despite a decline in market values;

5) a neighboring, 6.7-acre lot had only a $48,000 land value, which equates to a $7,194 per-acre value, yet the Property had a $42,575 per-acre value;

6) the land assessment should be $47,000;

7) 2-acre lots sold for $72,000 to $90,000 in 1991, a 2.01-acre lot was under contract for $94,000, and a 2-acre lot was listed for sale for $75,000 in February, 1992;

8) the Town's 2.5-acre comparable with a 3,038 square-foot home and detached garage (Lot 25) sold in August, 1985, for $130,000, had a $68,550 land assessment in 1990, and currently has a $77,600 land assessment, yet the Property, with only a 1,932 square-foot house on 2 acres, was purchased in 1986 for $124,000 with a $74,850 land assessment;

9) in the case Appeal of James Andrews, the court states that the Town cannot assess a higher percentage of fair market value than the median ratio set for the Town, and all abatements to the median ratio should be granted if the Town relies on the median ratio in assessing properties; and

10) recent sales in the subdivision sold for $325,000 in May, 1991, and

$334,600 and $375,000 in February, 1991.

The Town argued the assessment was proper because:

1) the Property's 1986 purchase price and assessment were consistent and equitable with other lots in the subdivision;

2) the land assessment was increased in 1988 to reflect the site clearing for construction and the septic system installation;

3) there have been no qualified sales in the Taxpayers' subdivision since 1987, and the Taxpayers' comparables are not comparable, i.e., Pine Hill Estates is not a comparable neighborhood, the Ship Rock Estates were liquidation sales after foreclosure, and the neighboring lot is not comparable because prices in the area are in the $175,000 range, and the lot owner purchased the property in 1982 for only $86,000;

4) the Taxpayers' must view the Property as a whole and not just consider the land valuation;

5) the most comparable property in the Taxpayers' subdivision is Lot 25 which sold in March, 1988 for $475,000, which, when equalized by 47%, equates to a $223,250 price, which is within range of the Property's assessment;

6) the Taxpayers' list of most recent sales is irrelevant because the most recent sales in the subdivision were foreclosures;

7) qualified sales sold in June, 1989 for $409,000 with a $199,200 assessment, August, 1989 for $850,000 with a $380,700 assessment (which later resold in 1990 for $1,044,950), August, 1991 for $429,000 with a $251,500 assessment, and October, 1991 for $540,000 with a $265,000 assessment;

8) Lot 25 has only 175 front footage where the Property has 242 feet; and

9) the Property's building footprint is 1,932 square feet, but the total living area is 3,038 square-feet and, therefore, is comparable to Lot 25.

Board's Rulings

Based on the evidence, the board finds the Taxpayers improperly focused their arguments on the land portion of the assessment rather than the entire assessment. Proportionality of a taxpayers share of the common tax burden is determined by considering their entire estate, not just a portion of it. Appeal of Town of Sunapee 126 N.H. 214, 1985 (taxpayer is not entitled to an abatement where the aggregate value is not shown to be disproportional); Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205 (1899) (an abatement is not warranted where the overassessment of one portion of a taxpayer's estate is offset by the underassessment of another portion of the estate).

The Taxpayers did not present any credible evidence of the market value of the total Property. The sales they did reference were rebutted by the Town as either not being arm's length sales or from neighborhoods not comparable to the Taxpayers'. In support of the assessment, the Town referenced sales of property in the Taxpayers' neighborhood that sold from June, 1989 to October, 1991, in a range from $409,000 to $1,044,950.

Because the Taxpayers failed to submit credible evidence of market value for the entire estate owned by them, they failed in their burden of proving they were paying more than their proportional share of the tax burden. Milford Properties, Inc. v. Town of Milford, 119 N.H. 165 (1979).

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to John and Monica Fraser, Taxpayers; and Chairman, Selectmen of North Hampton.

Dated: June 18, 1993

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Melanie J. Ekstrom, Deputy Clerk

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